

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-40-005

TROLLEY METCALF, JR.,

Defendant.

ORDER

On December 15, 2006, this court sentenced Trolley Metcalf, Jr. to 58 months' imprisonment for violations of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846. This sentence was imposed on the basis of Metcalf's total offense level – 29, and a criminal history score of 1, which taken together called for a guideline sentence of 87-108 months before giving consideration to the government's 5K1.1 motion. Although charged with offenses involving both crack and powder cocaine, in this instance the defendant's total offense level was calculated solely on the basis of relevant conduct that involved powder cocaine.

On November 1, 2007, the United States Sentencing Commission amended the advisory federal sentencing guidelines for criminal offense involving crack cocaine. On December 11, 2007, the Sentencing Commission further decided that, effective March 3, 2008, these amended guidelines would apply retroactively to all offenders who were sentenced under the previous versions of the sentencing guidelines and who are presently incarcerated. The practical effect of these

amendments is that, pursuant to the provisions of 18 U.S.C. § 3582(c)(2), defendants previously convicted of offenses involving crack cocaine may be eligible for a reduction in their sentence.

On September 19, 2008, Metcalf filed a pro se motion to reduce his sentence pursuant to § 3582(c)(2). Having considered Metcalf's motion, together with an analysis from the United States Probation Office, and input from the United States Attorney's Office, the court concludes that his motion must be denied. Under the amended guidelines, Metcalf's offense level and sentencing guideline range remain the same. As earlier noted, Metcalf stands convicted for drug offenses involving powder and crack cocaine; however, his guideline range was calculated solely upon the weight of powder cocaine, which is not a drug affected by the Sentencing Commission's amendments. Therefore, the court finds no factual or legal basis to reduce the sentence of 58 months' imprisonment imposed on December 15, 2006.

Accordingly,

IT IS ORDERED that Metcalf's motion to reduce (Docket #244) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 29th day of October, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge